IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 387/06
(Ashok Kumar Lohati Vs. State of Rajasthan & Anr.)

Date of Order : 11/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.P.Sharma for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
None present for the non-petitioner No.2 though served.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 16.2.2006 passed by Additional Sessions Judge No.3, Jodhpur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the non-petitioner No.2 against the order dated 31.8.2005 passed by Judicial Magistrate, Pipar City (for short 'the trial court' hereinafter), was allowed and while setting aside the order of the trial court discharged the non-petitioner No.2 of the offences under Sections 420, 467, 468 and 471 IPC. Hence this criminal misc. petition.

I have heard learned counsel for the petitioner and the public prosecutor for the State. Carefully gone through the

orders passed by the trial court and the revisional court.

Learned counsel for the petitioner has relied on decisions of this Court in Raj Kumar and Anr. Vs. Purshotam Chhabra 2005 (2) R.Cr.D.255 (Raj.), Girdhari Lal Vs. State of Rajasthan and Anr. 2005 (2) R.Cr.D. 259 (Raj.) and in Vishnu Purohit Vs. State of Rajasthan 2005 (2) R.Cr.D. 76 (Raj.).

A complaint was filed by the petitioner before the trial court for the offences under Sections 420, 467, 468 and 471 IPC against the non-petitioner No.2. The trial court sent the complaint to the SHO, Police Station, Pipar City for investigation under Section 156 (3) Cr.P.C. After thorough investigation, the police submitted negative final report on the ground that no such occurrence as alleged in the complaint has taken place. On a notice to the petitioner, he appeared before the trial court and filed a protest petition. The trial court recorded the statement of petitioner under Section 200 Cr.P.C. and the witnesses produced by him namely Shokat Ali and Asuram under Section 202 Cr.P.C. and took the cognizance of the offences as noticed above and issued the process. That order came to be challenged by the non-petitioner No.2 before the revisional court and the revisional court while allowing the revision petition, set aside the order of the trial court and discharged the non-petitioner of the offences.

The petitioner came with a case that he gave five blank cheques and stamp paper of Rs.100/- duly signed by him to Bhairav Automobiles Financier from whom it is alleged that he took a loan of Rs. 50,000/- to buy a loading taxi. The Bhairav Automobiles is the Financier Company. It appears that those cheques were presented to the bank by Padmawati Automobiles Financier, Pipar City and were returned unpaid and dishonoured on account of insufficient fund in the account of the drawer petitioner. Thereafter, a notice demanding the cheques amount within 15 days from the receipt of the notice was served on the petitioner. However, the petitioner failed to pay the cheques amount within the statutory period of 15 days and therefore, the non-petitioner No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. After institution of the complaint case, the petitioner lodged a first information report being FIR No.207/04 with Police Station, Mahamandir, Jodhpur on the same facts on which the present complaint has been filed. That FIR came to be challenged by the non-petitioner No.2 by way of a petition under Section 482 Cr.P.C. being S.B.Criminal Misc. Petition No.425/04. Vide order dated 27.8.2004 this Court quashed the FIR. After the FIR having been quashed by this Court, the petitioner filed the complaint before the trial court. The revisional court noticing the fact that for the dishonour of the cheque, a complaint has already been filed by the drawee of

the cheque against the present petitioner and the present complaint is to preempt the complaint filed by the drawee of the cheque against the petitioner, allowed the revision petition and discharged the non-petitioner of the offences. Even otherwise, the version of the petitioner was not found to be believable for many reasons which have been assigned by the revisional court in its order including the stamp paper which according to the petitioner complainant was of Rs. 100/-, whereas the stamp paper which has been produced in the proceeding, is of Rs. 50/-. The case of the petitioner is that he got the loading taxi financed from Bhairav Automobiles Financier and not from Padmawati Automobiles Financier. It appears from the order of the trial court that earlier the petitioner got the loading taxi finance from Bhairav Automobiles Financier, however, he was unable to repay the loan amount and therefore, he got the loan from Padmawati Automobiles Financier and that amount has been paid to Bhairav Automobiles Financier, for which some agreement dated 21.12.2003 was entered into which is on record. In my view, the revisional court was justified in setting aside the order of the trial court taking cognizance of the offences in view of decision of Hon'ble Supreme Court in Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & Ors. (1999) 8 SCC 468 wherein Hon'ble Supreme Court held that the necessary ingredients of the offence of cheating and criminal breach of trust have not been made out

and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act.

In S.K.Gulati and Ors. Vs. State of Rajasthan and Anr. S.B.Criminal Misc. petition No. 177/2000 decided on 6.4.2004, this Court relying on the decision of Hon'ble Supreme Court in Sunil Kumar's case (supra) observed that even taking the allegations made in the complaint on its face value, it does not satisfy the essential ingredients of offences punishable under Sections 379 and 420 IPC and therefore, quashed the proceedings.

In this view of the matter, the decisions relied on by learned counsel for the petitioners are of no help to the petitioner as they turn on their own facts.

In the instant case, on the same facts, the FIR has already been quashed by this Court. Keeping in view, the decision of Hon'ble Supreme Court in Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & Ors. (supra), in my view, the revisional court was justified in setting aside the order of the trial court.

The criminal misc. petition has no force and it is therefore, dismissed.

(H.R.PANWAR),J.

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